

INDIVIDUAL RULES AND PRACTICES IN CRIMINAL CASES

Jesse M. Furman, United States District Judge

Chambers

United States District Court
Southern District of New York
40 Centre Street, Room 2202
New York, NY 10007
Furman_NYSDChambers@nysd.uscourts.gov

Courtroom

40 Centre Street, Courtroom 1105

Courtroom Deputy

Alexandra Smallman
(212) 805-0282

1. Electronic Case Filing (ECF)

Counsel are required to register for Electronic Case Filing (ECF) promptly after being retained or assigned. Counsel can obtain instructions on how to register at http://www.nysd.uscourts.gov/ecf_filing.php.

2. Communications with Chambers

- A. Initial Pretrial Conference.** Upon assignment of a criminal case to Judge Furman, the Assistant United States Attorney shall immediately call Chambers to arrange for a prompt conference/arraignment. The Assistant United States Attorney shall e-mail a courtesy copy of the indictment and the criminal complaint, if one exists, to the Court (Furman_NYSDChambers@nysd.uscourts.gov) as soon as practicable.
- B. Telephone Calls.** Any other communications with Chambers, including requests for extensions or adjournments, shall be by letter or letter-motion filed on ECF in accordance with Paragraphs 2.C and 4.C. For questions that cannot be answered by reference to these Rules or for *urgent* matters requiring immediate attention, call Alexandra Smallman, Courtroom Deputy, at (212) 805-0282.
- C. Letters.** Except for matters requiring immediate attention or as otherwise provided below, communications with the Court should be by letter, filed on ECF. Letters seeking relief, including requests for extensions, adjournments, or bail modification, should be filed on ECF as letter-motions in accordance with Paragraph 4.C below, *not* as ordinary letters. Parties should **not** submit courtesy copies of letters filed on ECF.

Letters to be filed under seal or containing sensitive or confidential information may be e-mailed as a .pdf attachment to the Court (Furman_NYSDChambers@nysd.uscourts.gov) with a copy simultaneously

delivered to all counsel. Any such e-mail shall state clearly in the subject line: (1) the caption of the case, including the lead party names and docket number; and (2) a brief description of the contents of the letter. Parties shall not include substantive communications in the body of the e-mail; such communications shall be included only in the body of the letter. (The sender of an e-mail will ordinarily receive an auto-reply e-mail appearing to come from the Courtroom Deputy stating that substantive communications in the body of the e-mail will be disregarded. Parties need not, and should not, respond to the auto-reply message.)

Whether filed electronically or not, letters (together with any related exhibits) may not exceed ten pages in length. Letters solely between parties or their counsel or otherwise not addressed to the Court may not be filed on ECF or otherwise sent to the Court (except as exhibits to an otherwise properly filed document).

D. Requests for Adjournments or Extensions of Time. All requests for adjournments or extensions of time must be made in writing and filed on ECF as letter-motions in accordance with Paragraphs 2.C and 4.C, *not* as ordinary letters. (If a request contains sensitive or confidential information, it may be submitted by e-mail in lieu of being filed electronically.) The letter-motion must state: (1) the original date(s); (2) the number of previous requests for adjournment or extension; (3) whether these previous requests were granted or denied; (4) the reason for the extension or adjournment; (5) whether the adversary consents and, if not, the reasons given by the adversary for refusing to consent; and (6) the date of the parties' next scheduled appearance before the Court. If a party seeks an exclusion of time under the Speedy Trial Act, 18 U.S.C. § 3161, the party must submit to the Court **by e-mail** (Furman_NYSDChambers@nysd.uscourts.gov) a proposed order (in Microsoft Word format) along with its request for adjournment or extension.

Absent an emergency, any request for extension or adjournment shall be made *at least 48 hours* prior to the deadline or scheduled appearance and any request for adjournment of sentencing shall be made *at least 72 hours* prior to the scheduled proceeding. Requests for extensions will ordinarily be denied if made after the expiration of the original deadline.

E. Faxes. Faxes are *not* permitted except with prior approval of Chambers.

F. Hand Deliveries. Hand-delivered mail should be left with the Court Security Officers at the Worth Street entrance of the Daniel Patrick Moynihan United States District Courthouse at 500 Pearl Street, New York, NY 10007 and may not be brought directly to Chambers, except by representatives of the United States Attorney's Office or the Federal Defenders of New York. Hand deliveries are continuously retrieved from the Worth Street entrance by Courthouse mail staff and then forwarded to Chambers. If the hand-delivered letter is urgent and requires the Court's immediate attention, ask the Court Security Officers to notify

Chambers that an urgent package has arrived that needs to be retrieved by Chambers staff immediately.

- G. Urgent Communications.** As a general matter, materials filed via ECF are reviewed by the Court the business day after they have been filed. If a submission requires more immediate attention, please notify chambers by telephone after you file via ECF.

3. Defense Counsel

- A. Benefactor Payments.** Whenever defense counsel has received, or is receiving, a benefactor payment that subjects counsel to a conflict of interest, said counsel must inform the Court and request a *Curcio* hearing *at the first conference*.
- B. Other Conflicts.** Counsel have an obligation to promptly inform the Court upon learning of any other conflict of interest, whether a potential or an actual conflict, and to request a *Curcio* hearing if appropriate.
- C. Substitution of Counsel.** When there is a substitution of defense counsel, counsel of record must contact the Courtroom Deputy to schedule a conference as soon as possible. At the conference, the Court will address the application by defense counsel to be relieved. The defendant, replacement counsel, and the Assistant United States Attorney must also attend the conference.

4. Motions

- A. Memoranda of Law.** Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages, and reply memoranda are limited to 10 pages. All memoranda of law shall be in 12-point font or larger and be double spaced. Memoranda of 10 pages or more shall contain a table of contents and a table of authorities, neither of which shall count against the page limit. Sur-reply memoranda will not be accepted without prior permission of the Court. All appendices to memoranda of law must be indexed.
- B. Discovery Motions.** In making discovery motions, counsel must comply with Southern District Local Criminal Rule 16.1. Any discovery motion must contain the Rule 16.1 affidavit.
- C. Letter-Motions.** Letter-motions may be filed via ECF if they comply with the S.D.N.Y. Local Rules and the S.D.N.Y. "Electronic Case Filing Rules and Instructions." In particular, in accordance with Paragraph 2.D. above, all requests for adjournments and extensions should be filed as letter-motions. A courtesy copy should *not* be provided to Chambers.

5. Bail Modification

Any written request for a bail modification by a defendant shall be filed on ECF as a letter-motion (not an ordinary letter) and shall indicate whether the Government and the Pre-Trial Services Officer consent to the request.

6. Guilty Pleas

- A. Plea Agreements and *Pimentel* Letters.** When a defendant is pleading guilty pursuant to a plea agreement or a cooperation agreement, a copy of the agreement ordinarily must be received by Chambers at least two business days before the scheduled plea. Where the Government is providing a *Pimentel* letter, a copy of the *Pimentel* letter must be received by Chambers no fewer than two business days before the scheduled plea. These documents should be e-mailed to the Court at Furman_NYSDChambers@nysd.uscourts.gov.
- B. Preparation for Allocution.** Prior to the date set for the plea, defense counsel are expected to have reviewed with the defendant — if necessary, with the assistance of an interpreter — any *Pimentel* letter or plea, cooperation, or other agreement, as well as the Advice of Rights form available (in English and Spanish) at <http://nysd.uscourts.gov/judge/Furman>. Defense counsel and the defendant should execute any plea or cooperation agreement, as well as the Advice of Rights form, prior to the time set for the plea. The defendant should also be prepared in advance of a guilty plea to give narrative allocutions that incorporate all of the elements of the offense(s) to which the defendant is pleading guilty.

7. Trials

- A. Trial Dates.** Judge Furman's general practice is to set a trial date at the second pretrial conference (after the filing of any defense motions). In advance of that conference, counsel should confer with respect to when they would want to have the trial and should advise the Courtroom Deputy of their preferred time period.
- B. Pre-Trial Deadlines.** In most cases, the Court will enter an order approximately two months before the trial date scheduling a final pretrial conference and setting deadlines for the submission of requests to charge, proposed *voir dire*, proposed verdict forms, and any motions *in limine*.
- C. Proposed *Voir Dire*, Jury Instructions, and Verdict Forms.** The parties should include in their proposed *voir dire* a brief description of the case and a list of names and places likely to be mentioned at trial, both to be read to prospective jurors during jury selection. At the time of filing, each party should submit one courtesy hard copy of its proposed *voir dire*, proposed jury instructions, and a

proposed verdict form to the Court. In addition, each party should e-mail those documents, as Microsoft Word documents, to Furman_NYSDChambers@nysd.uscourts.gov. Absent good reason, the parties should not include proposed language for standard instructions (about, for example, the role of the Court and the jury, the standard of proof, etc.), as the Court is likely to use its own standard instructions; instead, the parties should include a list of standard instructions that they believe are appropriate and focus their attention on case-specific requests to charge.

- D. Exhibits and 3500 Material.** At the start of the trial, the Government must provide the Court with three hard copies of its exhibit list, and one set of pre-marked documentary exhibits and Section 3500 material assembled sequentially in a loose leaf binder (not to exceed 2 1/2 inches in thickness), or in separate manila folders labeled with the exhibit numbers and placed in a suitable container for ready reference.
- E. Other Trial Rules and Procedures.** In addition to the foregoing, counsel shall familiarize themselves with, and abide by, Judge Furman's Individual Rules and Practices for Trials, available at <http://nysd.uscourts.gov/judge/Furman>.

8. Sentencing

- A. Sentencing Adjournments.** Any request for an adjournment of a sentencing should be made as early as possible, and *no later than 72 hours* before the sentencing proceeding, in accordance with Paragraph 2.F above.
- B. Sentencing Submissions.** Unless prior permission has been granted, sentencing memoranda are limited to 25 pages. Unless otherwise ordered by the Court, a defendant's sentencing submission shall be filed and served two weeks in advance of the date set for sentencing. The Government's sentencing submission shall be filed and served one week in advance of the date set for sentencing. If a party does not intend to file a substantive sentencing submission, the party shall file and serve a letter to that effect.
- C. ECF Filing.** Except for submissions to be filed under seal or in redacted form, every document in a sentencing submission, including letters, must be filed on ECF. Letters should be grouped and filed together as attachments to a single document marked SENTENCING SUBMISSION with the caption and docket number clearly indicated. The defendant is responsible for filing all letters submitted on behalf of the defendant, including those from friends and relatives. The Government is responsible for filing all letters from victims.
- D. Courtesy Copies.** Parties need **not** submit courtesy hard copies of sentencing submissions filed on ECF, but — if requesting leave to file material under seal or

in redacted form — shall submit one courtesy hard copy of any material in unredacted form (to be filed under seal in the event the Court grants the request).

9. Redactions.

A. Redactions Not Requiring Court Approval. The parties are referred to the E-Government Act of 2002 and the [Southern District's ECF Privacy Policy](#) ("Privacy Policy") and reminded not to include, unless necessary, the five categories of "sensitive information" in their submissions (i.e., social security numbers [use the last four digits only], names of minor children [use the initials only], dates of birth [use the year only], financial account numbers [use the last four digits only], and home addresses [use only the City and State]). Parties may redact the five categories of "sensitive information" and the six categories of information requiring caution (i.e., personal identifying number, medical records (including information regarding treatment and diagnosis), employment history, individual financial information, proprietary or trade secret information, and information regarding an individual's cooperation with the government), as described in the Privacy Policy, without Court approval.

B. Redactions Requiring Court Approval. Except for redactions permitted by Paragraph 9.A, **all redactions require Court approval.** To be approved, redactions must be narrowly tailored to serve whatever purpose justifies them and otherwise consistent with the presumption in favor of public access to judicial documents. *See, e.g., Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006). The party should file the redacted document on ECF. At the same time, the party should (1) file (on ECF, if possible, and otherwise by e-mail) an application explaining and seeking leave for the redactions; and (2) e-mail to the Court (Furman_NYSDChambers@nysd.uscourts.gov) both an unredacted copy of the document and a copy of the document highlighting what information has been redacted. If the application for redaction is approved, the Court will file and maintain the unredacted copy of the document under seal.

10. Policy on the Use of Electronic Devices

Attorneys' use of electronic devices (including mobile telephones, personal electronic devices, computers, and printers) within the Courthouse and its environs is governed by the Court's Standing Order M10-468, available at <http://nysd.uscourts.gov/file/forms/standing-order-electronic-devices>. If required by the Standing Order, counsel seeking to bring a device into the Courthouse shall submit a copy of the Electronic Devices General Purpose Form, available at <http://www.nysd.uscourts.gov/file/forms/standing-order-electronic-devices-form>, to the Court by e-mail (Furman_NYSDChambers@nysd.uscourts.gov) at least 24 hours prior to the relevant trial or hearing. *If permitted by the Standing Order, mobile telephones are permitted inside the Courtroom, but they MUST be kept turned off at all times.* Non-

compliance with this rule may result in forfeiture of the device for the remainder of the proceedings.

If you have any questions about these practices, please contact Alexandra Smallman, Courtroom Deputy, at (212) 805-0282.